

Amendment No. 1 to HB1132

Terry
Signature of Sponsor

AMEND Senate Bill No. 558*

House Bill No. 1132

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 4, is amended by adding
Section 2 as a new, appropriately designated part.

SECTION 2.

(a) The opioid abatement fund is established and funded pursuant to this
section.

(b) The opioid abatement fund shall operate as an irrevocable trust that the state
treasurer shall administer. Amounts in the opioid abatement fund shall not revert to the
general fund of the state. The treasurer and attorney general and reporter shall approve
the terms of the trust instrument. The terms of the trust instrument shall not be
substantively amended except by unanimous approval of the trustees, the opioid
abatement council established pursuant to SECTION 6 of this act, and the attorney
general and reporter.

(c)

(1) Funds in the opioid abatement fund shall be spent only for the
following purposes:

(A) Prospective opioid abatement and remediation;

(B) Expenses incurred in administering and operating the opioid
abatement council;

(C) Related expenses as provided in SECTION 7(b); and

(D) Expenses associated with administering, investing, and disbursing funds held in the opioid abatement fund.

(2) Funds in the opioid abatement fund shall not be used to reimburse expenditures incurred prior to the effective date of this act. Funds from the opioid abatement fund shall not be used to pay litigation costs, expenses, or attorney fees arising from the enforcement of legal claims related to the opioid epidemic.

(3) Any opioid abatement fund disbursements must be made at the direction of the opioid abatement council. Except to the extent required by law, the trustees of the opioid abatement fund shall not make or refuse to make any disbursement contrary to the direction of the opioid abatement council.

(d)

(1) The trustees of the opioid abatement fund are:

(A) The commissioner of finance and administration;

(B) The state treasurer; and

(C) The chair of the opioid abatement council.

(2) The state treasurer shall serve as the chair of the trustees and shall preside over all meetings and proceedings of the trustees.

(3) To the extent not prohibited by law, the trustees shall not act contrary to the direction of the opioid abatement council and shall uphold the decisions the council renders regarding disbursement of funds from the opioid abatement fund. The trustees have only a ministerial role and not a discretionary role in the distribution of funds, as directed by the opioid abatement council. The trustees have no duties concerning the opioid abatement fund other than those duties set forth in the opioid abatement fund's trust instrument and in this part.

(e) The opioid abatement fund is the designated repository of funds that are either dedicated to opioid abatement or remediation or are otherwise directed to abatement or remediation and that are received by the state pursuant to a judgment on

opioid-related claims, a recovery in bankruptcy on opioid-related claims, or a settlement of opioid-related claims. This subsection (e) does not prevent the opioid abatement fund from also receiving funds from other sources if the funds will be dedicated to abatement.

(f)

(1) The trustees shall adopt, in writing, an investment policy or policies authorizing how assets in the trust may be invested prior to investments being made.

(2) Funds in the opioid abatement fund may be invested and reinvested for the benefit of the fund by the state treasurer pursuant to § 9-4-603. The trustees shall delegate to the state treasurer the responsibility for the investment and reinvestment of trust funds in accordance with the policies and guidelines established by the trustees.

(3) All or a portion of the trust may be invested, reinvested, and coinvested with other funds, not a part of the trust, which are held by the state treasurer, including, but not limited to, assets of the state pooled investment fund established pursuant to part 6 of this chapter. The state treasurer shall account for the trust funds in one (1) or more separate accounts in accordance with this section or other law.

SECTION 3. Tennessee Code Annotated, Title 33, is amended by adding Sections 4 through 9 as a new, appropriately designated chapter.

SECTION 4. This chapter is known and may be cited as the "Opioid Abatement Council Act."

SECTION 5. As used in this chapter:

(1) "Commissioner" means the commissioner of mental health and substance abuse services;

(2) "Council" means the Tennessee opioid abatement council;

(3) "Department" means the department of mental health and substance abuse services;

(4) "Director" means the executive director of the council;

(5) "Opioid abatement and remediation purposes" means programs, strategies, expenditures, and other actions designed to prevent and address the misuse and abuse of opioid products and treat or mitigate opioid use or related disorders or other effects of the opioid epidemic;

(6) "Opioid abatement fund" means the fund created by SECTION 2 of this act;

(7) "State-subdivision opioid abatement agreement" means an agreement entered into by the state and one (1) or more political subdivisions of the state that addresses the allocation of funds dedicated to opioid abatement and remediation; and

(8) "Statewide opioid settlement agreement" means a settlement agreement entered into by the state and one (1) or more entities involved in activities related to the manufacture, marketing, distribution, dispensing, or sale of opioids in which political subdivision claims are addressed. A copy of the agreement, including any amendments thereto, must be kept on the website of the attorney general and reporter.

SECTION 6.

(a) There is created the Tennessee opioid abatement council.

(b) The council is composed of fifteen (15) voting members and one nonvoting ex-officio member. The commissioner or the commissioner's designee shall serve as the nonvoting ex-officio member. Voting members must be residents of this state and have expertise and a minimum of ten (10) years of experience in public health policy, medicine, substance use disorder and addiction treatment, mental health services, drug misuse prevention programs, or drug court diversion or other programs in which people with substance use disorders interact with first responders, law enforcement, or the criminal justice system. A member shall not serve more than two (2) terms

consecutively but may be reappointed to the council after not serving as a member for two (2) or more years.

(c) The council shall be appointed as follows:

(1) The governor shall appoint four (4) members, including the chair;

(2) The speaker of the senate shall appoint four (4) members;

(3) The speaker of the house of representatives shall appoint four (4) members;

(4) The Tennessee County Services Association shall appoint two (2) members; and

(5) The Tennessee Municipal League shall appoint (1) member.

(d) Upon creation of the council, the members appointed in subdivisions (c)(2) and (3) shall serve an initial four-year term and the members appointed in subdivisions (c)(4) and (5) shall serve an initial five-year term to enable the staggering of terms.

(e) With the exception of the initial terms established in subsection (d), each appointed member of the council shall serve a three-year term, with terms ending on June 30 of each year. The beginning of an initial term shall be deemed to be July 1 of the calendar year in which the appointment occurs, regardless of whether the actual appointment date occurs before or after July 1 of that year.

(f) The respective appointing authority may remove a member for failure to attend at least one-half (1/2) of the scheduled meetings in any one-year period or for other cause.

(g) If a vacancy on the council occurs, the respective appointing authority shall fill the vacancy for the unexpired term. Notwithstanding the expiration of a member's term, each member shall serve until a successor is duly appointed.

(h)

(1) The members shall serve without compensation, but each member shall be entitled to reimbursement for the member's actual and necessary expenses incurred in the performance of the member's official duties.

(2) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations promulgated by the department of finance and administration.

(3) All actual and necessary expenses incurred in the performance of members' official duties shall be paid from the opioid abatement fund and not the general fund.

(i) The council shall meet at the call of the chair and not less than four (4) times per year. The meeting location shall rotate among locations in each of the three (3) grand divisions. Members may attend meetings in person or remotely by audiovisual means, as provided in § 8-44-108.

(j) Meetings of the council must comply with the open meeting requirements of title 8, chapter 44. Notwithstanding the open meeting requirements of title 8, chapter 44, the council is permitted to meet in a closed executive session for the purpose of obtaining advice from counsel and discussing personnel-related issues in addition to any other purposes allowed by title 8, chapter 44.

(k) Records of the council are deemed to be public records for purposes of the open records law, compiled in title 10, chapter 7, subject to the confidentiality provisions of § 10-7-504 and other laws or doctrines.

(l) The annual report, financial statements, all books, accounts, and financial records of the council shall be subject to annual audit by the comptroller of the treasury. Any monies distributed to local governments from the fund shall also be subject to audit by the comptroller of the treasury.

(m) Written minutes covering all meetings and actions of the council shall be prepared by the director and shall be maintained by the department and open to public inspection.

(n) The council shall not be subject to the Tennessee Governmental Entity Review Law, compiled in title 4, chapter 29, but instead will terminate when all opioid abatement monies being paid pursuant to existing settlements, judgments, or court orders have been received and disbursed unless the attorney general and reporter certifies that additional funds are anticipated within one (1) year.

(o) The council shall not be subject to the contested case procedures set forth in title 4, chapter 5, part 3. If a court has entered a consent judgment agreed to by the state through the approval of the attorney general and reporter that incorporates a statewide opioid settlement agreement or a state-subdivision opioid abatement agreement, and such an agreement provides for the court in which the consent judgment was filed to determine particular disputes, the court that entered the consent judgment shall have exclusive jurisdiction over such disputes. Otherwise actions to disburse funds are final.

(p) For proceeds received from a statewide opioid settlement agreement with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, or Johnson & Johnson or affiliates or subsidiaries of these entities that are deposited in the opioid abatement fund, the council shall disburse thirty-five percent (35%) of these proceeds to counties that join the settlement. The council shall disburse these proceeds to counties subject of subsections (q)-(s). The council shall disburse the remaining sixty-five percent (65%) of such proceeds for statewide, regional, or local opioid abatement and remediation purposes pursuant to SECTION 8.

(q) Proceeds disbursed to counties under subsection (p) shall be allocated according to data measuring the impact of the opioid crisis at the county level. The allocation may be set in a state-subdivision opioid abatement agreement. If there is no

agreement, the council will determine the allocation using population to determine half of the allocation and state data on opioid sales measured by morphine milligram equivalents, fatal overdoses, and non-fatal overdoses to determine the other half of the allocation. The council will use aggregate data for at least three (3) years and will update the data every four (4) years. If any of these sets of data are not available, the council may use the remaining data sets or substitute another set of data that reflects the impact of the opioid crisis.

(r) Funds allocated to a county pursuant to subsection (p) are subject to subsection (s) and must be spent on opioid abatement and remediation purposes that are:

- (1) Specifically approved by the council; or
- (2) Included on a council list of approved programs.

(s) The council:

- (1) Shall create a list of approved programs for opioid abatement and remediation for use by the council, the state, or local governments;
- (2) Shall create a certification process through which government entities verify the use of funds for programs on the council's list of approved programs;
- (3) Has the authority to create an application and certification process for counties applying for funds toward programs not on the council's list of approved programs;
- (4) Has the authority to develop rules and time limitations for use of medication assisted therapies in treating opioid addiction that are paid for through the opioid treatment fund; and
- (5) Has the authority to create a timeline for monies paid to the counties to revert back to the opioid treatment fund if they are not used within a certain period by a county.

SECTION 7.

(a)

(1) The department shall serve as staff to the council and shall recommend to the council a candidate to serve as executive director of the council.

(2) If a majority of the council votes to decline the department's recommendation within fourteen (14) calendar days of receiving the recommendation, the department shall submit a new candidate.

(3) If a majority of the council either votes in favor of the department's recommendation or does not decline the recommendation in accordance with subdivision (a)(2), the candidate may be hired as the director and shall be an employee of the department.

(b) The director must be a full-time position. The commissioner may recommend that a current department employee serve as the director, subject to subsection (a). The commissioner shall establish the director's salary and other compensation, which shall be no more than the department's highest-paid assistant commissioner. The director's salary and compensation shall be paid from the opioid abatement fund, as shall the salaries and compensation of other council staff and department employees the commissioner deems necessary to administer the council. The commissioner may hire two (2) full-time employees to staff the council in addition to the director and hire additional staff upon approval of the council. Salaries and compensation levels shall be comparable to department employees doing similar work. New or additional department costs and all expenditures related to the council shall be paid from the opioid abatement fund and not the general fund. The commissioner shall provide reports as the council may require on staffing, salaries, compensation, and other costs and expenditures related to the council.

SECTION 8. The duties and responsibilities of the council include the following:

(a) Subject to the terms of a state-subdivision opioid abatement agreement or a statewide opioid settlement agreement concerning funds paid pursuant to such agreement, the council shall direct the disbursement of funds held in the opioid abatement fund by decisions approved by at least a majority of the entire membership of the council. These disbursement directives shall be limited to funding or supporting opioid abatement and remediation purposes and related administrative costs. Before rendering decisions regarding the disbursement of funds, the council shall receive input from the department's statewide planning and policy council's need assessment process, which is conducted with the assistance of seven (7) regional planning and policy councils, and allow for comment and input from community stakeholders, local governments, state and local public health officials, public health advocates, law enforcement and judiciary representatives, opioid remediation service providers, and other parties interested and actively involved in addressing the opioid crisis and its abatement. The council shall develop policies to provide reasonable opportunity to receive input from these parties.

(b) The council shall create and the director shall deliver to the governor, the speaker of the senate, the speaker of the house of representatives, the chairs of the government operations committees of the senate and house of representatives, and the chairs of the finance, ways and means committees of the senate and house of representatives on or before September 30 of each year an annual report for the prior fiscal year that details the total funds deposited into the opioid abatement fund, the abatement strategies funded, and any disbursement or expenses paid from the opioid abatement fund.

SECTION 9. The council is exempt from the requirements of title 12, chapter 3, related to procurement.

SECTION 10. Tennessee Code Annotated, Title 47, is amended by adding Sections 11 through 15 as a new, appropriately designated chapter.

SECTION 11. This chapter is known and may be cited as the "Tennessee Opioid Abatement Act."

SECTION 12. The general assembly finds and declares the following:

(1) The opioid crisis presents serious health and safety concerns throughout the state and is a threat to the general welfare of the people of this state;

(2) The provision of care, rehabilitation, and treatment for opioid abuse and dependency creates a substantial drain on governmental resources;

(3) It is the intention of the general assembly to facilitate statewide opioid settlement agreements that provide a coordinated resolution of state and local governmental claims against entities involved in the manufacture, marketing, distribution, dispensing, or sale of opioids, or related activities, in order to generate funds for opioid abatement programs and remediation; and

(4) A statewide coordinated resolution of state and local claims against entities involved in activities related to the manufacture, marketing, distribution, dispensing, or sale of opioids, or related activities, is critical to resolving current litigation and other claims regarding the opioid crisis and maximizing the financial commitment of those entities.

SECTION 13. As used in this chapter, unless the context requires otherwise:

(1) "Declaration of a statewide opioid settlement agreement release" means a written release approved by the attorney general and reporter for a statewide opioid settlement agreement, which must include or reference the approval of the governor and comptroller of the treasury;

(2) "District" means the governmental districts in the state, including, but not limited to, school districts, judicial districts, hospital districts, health districts, utility districts, fire districts, development districts, special districts, and other public districts;

(3) "Governmental entity" means:

(A) The state and each of its departments, agencies, divisions, boards, commissions, and other instrumentalities;

(B) Any political or governmental subdivision or other public entity within the boundaries of the state, including, but not limited to, counties, municipalities, districts, and towns and any department, agency, division, board, commission, and other instrumentalities thereof; and

(C) Any governmental official, officer, or employee of the state or of a political or governmental subdivision or other public entity within the boundaries of the state acting in an official capacity;

(4) "Released claims" means the causes of action and other claims that are released in a statewide opioid settlement agreement or as set forth in a declaration of such an agreement by the attorney general and reporter, including matters identified as released claims as that term or a comparable term is defined in a statewide opioid settlement agreement;

(5) "Released entities" means the entities released in a statewide opioid settlement agreement and pursuant to a declaration of a statewide settlement agreement by the attorney general and reporter, including those identified as released entities as that term or a comparable term is defined in a statewide opioid settlement agreement;

(6) "State-subdivision opioid abatement agreement" means an agreement entered into by the state and one (1) or more subdivisions of the state that addresses the allocation of funds dedicated to opioid abatement; and

(7) "Statewide opioid settlement agreement" means a settlement agreement entered into by the state and one (1) or more entities involved in activities related to the manufacture, marketing, distribution, dispensing, or sale of opioids in which subdivision claims are addressed.

SECTION 14. The funds obtained pursuant to a statewide opioid settlement agreement must be distributed pursuant to the agreement and any relevant provisions of a state-subdivision opioid abatement agreement. Copies of statewide opioid settlement agreements, including any amendments to such agreements, must be kept on the website of the attorney general and reporter.

SECTION 15. Upon the issuance of a declaration of a statewide opioid settlement agreement release by the attorney general and reporter PURSUANT TO SECTION 19, a governmental entity shall not have the authority to assert, bring, or attempt to enforce a released claim against a released entity in any legal proceeding. Any pending or future litigation brought by a governmental entity asserting released claims against released entities shall be dismissed with prejudice. Copies of declarations of a statewide opioid settlement agreement release must be kept on the website of the attorney general.

SECTION 16. Tennessee Code Annotated, Title 20, Chapter 13, is amended by adding Sections 17 through 20 as a new, appropriately designated part.

SECTION 17. The general assembly finds and declares the following:

(1) The opioid crisis presents serious health and safety concerns throughout the state and is a threat to the general welfare of the people of this state;

(2) The provision of care, rehabilitation, and treatment for opioid abuse and dependency creates a substantial drain on governmental resources;

(3) It is the intention of the general assembly to facilitate statewide opioid settlement agreements that provide a coordinated resolution of state and local governmental claims against entities involved in the manufacture, marketing, distribution, dispensing, or sale of opioids, or related activities, in order to generate funds for opioid abatement programs and remediation; and

(4) A statewide coordinated resolution of state and local claims against entities involved in activities related to the manufacture, marketing, distribution, dispensing, or sale of opioids, or related activities, is critical to resolving current litigation and other

claims regarding the opioid crisis and maximizing the financial commitment of those entities.

SECTION 18. As used in this part, unless the context requires otherwise:

(1) "District" means all governmental districts in the state, including, but not limited to, school districts, judicial districts, hospital districts, health districts, utility districts, fire districts, development districts, special districts, and other public districts; and

(2) "Governmental entity" means:

(A) The state and each of its departments, agencies, divisions, boards, commissions, and other instrumentalities;

(B) Any political or governmental subdivision or other public entity within the boundaries of the state, including, but not limited to, counties, municipalities, districts, and towns and any department, agency, division, board, commission, and other instrumentalities thereof; and

(C) Any governmental official, officer, or employee of the state or of a political or governmental subdivision or other public entity within the boundaries of the state acting in an official capacity.

SECTION 19. Upon written approval of the governor and comptroller of the treasury, the attorney general and reporter has the authority to release any pending or future claim of governmental entities against McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, and Johnson & Johnson and affiliates, subsidiaries, and other entities related to these companies that are released in the McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, and Johnson & Johnson settlement agreements for activities related to the manufacture, marketing, distribution, dispensing, or sale of opioids, or related activities, if the attorney general deems the release necessary to the interest of the state in the resolution of the opioid crisis.

SECTION 20. This part shall not be construed as a restriction or a limitation upon the powers that the attorney general and reporter might otherwise have under the laws of this state but must be construed as cumulative of and supplemental to these powers.

SECTION 21. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 22. This act takes effect upon becoming a law, the public welfare requiring it.